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Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

AMABLE DE LOS REYES AGUILUZ, JR,
Petitioner

v.

MICHAEL LEVITT, IN HIS CAPACITY AS SECRETARY OF HEALTH AND HUMAN RESOURCES
Respondent.

On Petition for Writ of Certiorari
To the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the United States Courts of Appeals have jurisdiction to review final administrative decisions of the United States Secretary of Health and Human Resources on exclusions of individuals and entities from participation in Federal and State health care programs under 42 U.S.C. 1320a-7(a)?

PARTIES TO THE PROCEEDING

The only parties to the proceeding are the petitioner and respondent as listed in the caption.

OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

[x] For cases from **federal courts:**

The opinion of the Court of Appeals for the Ninth Circuit (Before: GOODWIN, McKEOWN and FISHER, Circuit Judges) entered on December 22, 2006 summarily DISMISSED the petition for review for lack of jurisdiction

[ ] reported at:_____; or
[ ] has been designated for publication but is not yet reported; or
[x] unpublished (Case No. 06-73558).

JURISDICTION

The petition for review before the Court of Appeals for the Ninth Circuit was summarily dismissed on December 22, 2006 for lack of jurisdiction under 42 U.S.C. §§ 1320a-7(f) and 405(g).

The jurisdiction of this court is invoked under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

The Secretary of Health and Human Resources excluded petitioner, a physician, from participation in Federal and State health care programs under 42 U.S.C. § 1320a-7(a)(1) for a period of five years following petitioner's plea of "nolo contendere" to a misdemeanor violation of California Business and Professions Code § 650 for which petitioner was sentenced to summary (informal) probation of one month and four days with various monetary assessments.

Petitioner filed a petition for review with the Court of Appeals for the Ninth Circuit pursuant to 42 U.S.C. §§ 1320a-7a(e) and 1320a-8(d).
The Court of Appeals summarily dismissed the petition for review claiming lack of jurisdiction under 42 U.S.C.§§ **1320a-7(f)** and **405 (g)**

REASONS FOR GRANTING THE PETITION

This case is without question the appropriate vehicle for the Court to address the Ninth Circuit's refusal to exercise its jurisdiction to conduct judicial review of final administrative decisions of the Secretary of Health and Human Resources on exclusions of certain individuals and entities from participation in any Federal or State health care program under 42 U.S.C. § 1320a-7(a)(1).

The jurisdiction of the Court of Appeals to review a determination of the Secretary on exclusions of certain individuals and entities under 42 U.S.C. § 1320a-7(a)(1) is specifically provided in 42 U.S.C.§§ **1320a-7a(e)** and **1320a-8(d)**.

42 U.S.C.§ **1320a-7a(e)** expressly provides the any person adversely affected by a determination of the Secretary [in a proceeding to exclude a person from participation in the Federal health care programs as defined in 42 U.S.C. 1320a-7(a)(1)] under this section may obtain a review of such determination in the United States **Court of Appeals** for the circuit in which the person resides, or in which the claim was presented. The jurisdiction of the court shall be **exclusive** and the judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of Title 28. This section specifically covers a person in petitioner's situation who is excluded from participating in a program under subchapter XVIII of this chapter or a state health care program under section 1320a-7 of this title [see 42 U.S.C. § 1320a-7a(1)(4)].

In like manner, 42 U.S.C. § **1320a-8b** expressly provides that any person adversely affected by a determination of the Commissioner of Social Security to exclude a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter [1320a-8(a)(1)(C)] may obtain a review of such determination in the United States **Court of Appeals** for the circuit in which the person resides or in which the statement or representation referred to in subsection (a) was made. As in 42 U.S.C.§ 1320a-7a(e), it is provided that the jurisdiction of the court shall be **exclusive** and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28.

However, the Ninth Circuit chose to ignore these specific mandates and summarily dismissed the petition for review by invoking 42 U.S.C. 1320a-7(f) and 405(g).

42 U.S.C. 1320a-7(f) provides that any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to judicial review of the Secretary's final decision "as is provided in section 405(g). In turn, 42 U.S.C. § 405(g) that any individual may obtain a review of the Secretary's final decision by a civil action brought in the district court of he United States.

The Court should resolve this conflict in favor of petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

DATED: March 21, 2007.

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